

defendants should, on or before the 15th of the same month, pay or cause to be paid, to the complainant, its mortgage debt, amounting to eight hundred and fifty dollars, with interest thereon from the 27th of January, 1847, and the costs of this cause. A trustee was appointed for the purpose of making such sale, and qualified by giving the required bond.

He then proceeded to advertise the property, after the expiration of the time limited for the payment of the debt ; but before the day of sale, on the 8th of August, 1848, the defendants entered an appeal from the decree, and filed an appeal bond, which was approved by the register of the court, as authorized by the act of 1826, ch. 200, sec. 5 ; and, it appears, by the report of the trustee, that there was exhibited to him, on the day of sale, but before the sale took place, a certificate from the register of the fact of such appeal having been entered, and of the filing and approvement of the bond.

The trustee, however, acting under the impression that no appeal would lie from a decree, by consent, proceeded to make the sale ; and having reported it, and exceptions having been filed by the defendants to its ratification, upon the ground, that the appeal and bond superseded the decree, the question was submitted to the court upon the notes of the solicitors.

Upon these exceptions the Chancellor says:]

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THE CHANCELLOR :

The trustee maintains, that his proceeding in the matter was regular, because, an appeal will not lie from a decree, by consent, and refers to some observations made by the late Chancellor, in 1 *Bland*, 12, in which his honor does say, that a decree, passed by consent, cannot be appealed from ; but this position appears to be founded upon an analogy to proceedings at law, which, it seems to me, is not sanctioned by the practice or the decisions in this state. The remark of the Chancellor is, that "as at common law, no writ of error will lie from a judgment by default, or by consent ; so in equity, the decree or order appealed from must have been adverse, and not made by the express or tacit consent of the appellant."